

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

ROBERT BOSCH LLC,

Plaintiff,

V.

PYLON MANUFACTURING CORP.,

Defendant.

C.A. No. 08- 542-SLR

**DEFENDANT PYLON MANUFACTURING CORPORATION'S  
UNOPPOSED MOTION FOR LEAVE TO FILE SECOND AMENDED ANSWER,  
AFFIRMATIVE DEFENSES AND COUNTERCLAIMS**

Defendant Pylon Manufacturing Corporation (“Pylon”) respectfully submits this unopposed motion pursuant to Rule 15(a) of the Federal Rules of Civil Procedure (“Rule 15(a)”) for leave (the “Motion for Leave”) to file its Second Amended Answer, Affirmative Defenses and Counterclaims (the “Amended Answer”) to the First Amended Complaint filed by Plaintiff Robert Bosch, LLC (“Bosch”) to assert affirmative defenses and counterclaims related to inequitable conduct, derivation, improper inventorship and unclean hands. The grounds for these defenses and counterclaims were recently discovered in documents produced pursuant to a third party subpoena which establish that Bosch misappropriated the technology claimed in several of the patents-in-suit. A clean copy and a comparison version of the proposed Amended Answer are attached hereto as Exhibits A and B, respectively. In further support of the Motion for Leave, Pylon states as follows:

1. On April 11, 2009, Pylon served a subpoena *duces tecum* and *ad testificandum* (D.I. 36.) (the “Trico Subpoena”) on third-party Trico Products, Inc. (“Trico”). On or about May 5, 2009, Pylon received from Trico documents produced in response to the Trico Subpoena. The documentation included the declaration of Johannes Ferhsen dated July 12, 2001 and accompanying exhibits. Upon review of the Fehrsen Declaration, Pylon learned for the first time that Bosch was not responsible for several of the inventions claimed in the patents-in-suit. (*See* Ex. A., ¶¶ 16-52.).

2. Rule 15(a) provides that a party may amend a pleading by leave of Court or by written consent of the adverse party, and that leave to amend shall be freely given when justice so requires. FED. R. CIV. P. 15(a). *See Dole v. Arco Chem. Co.*, 921 F. 2d 484, 487 (3d Cir. 1990); *Proctor & Gamble Co. v. Nabisco Brands, Inc.* 125 F.R.D. 405, 408 (D. Del. 1987).

3. The information upon which the new affirmative defenses and counterclaim are based was recently provided by Trico and was not previously known to Pylon. Pylon could not have discovered this information earlier because the documents containing the information were internal Trico documents that were not in the public domain or otherwise available to Pylon.

4. The information provided by Trico is highly probative and, in fact, potentially dispositive of the validity and enforceability of several of Bosch’s purported patent rights. The information also raises serious questions about the viability of Bosch’s false advertising claims which are predicated on Bosch’s alleged technological innovations.

5. Bosch does not oppose Pylon's Motion for Leave and none of the deadlines in the Scheduling Order will be impacted if Pylon is permitted to amend its answer. Less than two months have passed since Bosch filed the Amended Complaint and little more than one month has passed since Pylon filed its Answer to the Amended Complaint. (*See* D.I. 31, 34.) Several months remain in the discovery period, which will allow ample time for discovery relevant to Pylon's affirmative defenses and counterclaim.

6. For the foregoing reasons, Pylon Manufacturing Corporation respectfully requests that the Court grant this Motion for Leave to file the Second Amend Answer, Affirmative Defenses and Counterclaims, in the form attached hereto as Exhibit A.

May 20, 2009

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